S. XXXX, A BILL TO ESTABLISH A CLEAR EXCEPTION FROM MARGIN FOR END-USERS
Section-by-Section

If enacted, this bill will amend the Commodity Exchange Act and the Securities Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), to establish a clear exception from margin requirements for end-users. Despite clear legislative history to the contrary, regulators continue to misinterpret the Dodd-Frank Act as giving them authority to impose margin requirements on end-users. This bill will ensure that end-users are not subject to margin requirements that Congress did not intend and ensure that regulators do not attempt to exercise authorities they were not granted in ways that would harm the economy by diverting working capital from productive uses[1] such as promoting economic growth and job creation.

Section 1. Margin Rules.

(a) End-User Exception to Margin Requirements. This provision provides a clear exception from margin requirements for swap transactions in which one of the counterparties is an end-user. Since there is no definition of "end user" in the Dodd-Frank Act, and defining the diverse universe of end-users is difficult, this bill determines who is excepted from margin requirements by delineating who is not excepted. Entities that are not excepted from margin requirements fall into the following categories:

- Swap dealers and major swap participants;
- Government Sponsored Enterprises; and
- Investment funds, other than those with a de minimis number of equity holders or that are primarily invested in physical assets.

This provision also clarifies that swaps entered into before final rules must be promulgated under the Dodd-Frank Act are exempt from margin requirements.

(b) Major Swap Participant Definition. This provision clarifies that regulators must use the *net* counterparty exposure of a person's outstanding swaps, instead of total counterparty exposure without netting, to determine whether a person is a major swap participant. This prevents end-users that pose little net systemic risk from being burdened unnecessarily with regulations meant for market participants with derivatives portfolios that could hold systemic significance.

Section 2. Securities Laws Amendments. This section is identical to section 1, except that it applies to security-based swaps.

Section 3. Effective Date. The provisions of this bill have the same effective date as provided in section 774 of the Dodd-Frank Act.

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[1] Imposing a three percent margin requirement on over-the-counter derivatives held by the S&P 500 companies could cut capital spending by $5.1 to $6.7 billion and cost 100,000 to 130,000 U.S. jobs. Coalition for Derivatives End-Users Survey (Feb. 11, 2011) *available at* http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/Coalition-for-Derivatives-End-Users-OTC-Derivatives-Survey_Final-Version-2-11-11.pdf.